

05-493 ORNASKI, WARDEN V. BELMONTES

DECISION BELOW: 414 F.3d 1094 (9th Cir. 2005)

LOWER COURT CASE NUMBER: 01-99018

QUESTIONS PRESENTED

1. Does *Boyde* confirm the constitutional sufficiency of California's "unadorned factor (k)" instruction where a defendant presents mitigating evidence of his background and character which relates to, or has a bearing on, his future prospects as a life prisoner?
2. Does the Ninth Circuit's holding, that California's "unadorned factor (k)" instruction is constitutionally inadequate to inform jurors they may consider "forward-looking" mitigation evidence constitute a "new rule" under *Teague v. Lane*, 489 , U.S. 288 (1989)?

Cert. granted 5/1/06